

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

PL
74-1550

74-1550

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

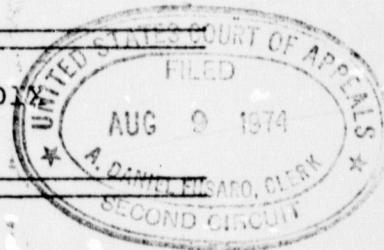
-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(8) - Pages 969 to 1053



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2 UNITED STATES OF AMERICA
3 vs.
CARMINE TRAMUNTI, et al.

73 Cr. 1099

4
5 New York, February 6, 1974;
10.00 A.M.

6 Trial resumed.
7 - -
8

9 (In the robing room.)

10 MR. PHILLIPS: We understand, your Honor,
11 that Murray Segal passed away last night.

12 THE COURT: I know. I received a phone call
13 as to that. I also understand that Mr. Alonzo is not
14 here. I was informed by the marshal's office that he
15 came down with abdominal pain, and since the doctor does
16 not arrive at West Street until 10.30, we have no idea
17 what is wrong with him, other than he is being left
18 there.

19 MR. CURRAN: Your Honor, is it possible that
20 he would be willing to proceed today without his own
21 presence?

22 THE COURT: I don't know. All I have are just
23 the facts that have been relayed to me from various
24 sources.

25 MR. PHILLIPS: Is the doctor going to be
examining him at 10.30?

2 THE COURT: Yes.

3 MR. LOPEZ: The only other matter is that Mr.
4 Leonard King would like to come in and discuss with your
5 Honor and the U.S. Attorney's office the matter of his
6 client possibly pleading in this case.

7 I understand that John Gamba -- Mr. King has
8 asked me to assist him I understand that John Gamba
9 in this case is charged only in the conspiracy count,
10 and of course no one can prevent him from entering a
11 plea of guilty there, but Mr. King would like to comment
12 and possibly discuss it with all of us. He has had a
13 little difficulty communicating with John Gamba --
14 although they fully understand each other -- so that he
15 has asked for my assistance in the matter, and I have
16 been glad to give it to him.

17 Shall I ask Mr. King to come in?

18 THE COURT: Surely.

19 (Mr. King entered the robing room.)

20 MR. KING: If your Honor please, I have been
21 requested by my client to explore the possibilities of
22 his entering a plea of guilty. We have discussed it for
23 quite some time, and, as your Honor probably knows, he
24 has already served time on a drug charge.

25 THE COURT: I don't know. I know nothing

2 about his background.

3 MR. KING: Well, he has. And the fact that he
4 was away from his family for about three and a half
5 years made a very deep impression on him, and with the
6 economics of the situation, and of course, like anyone
7 else, he had hoped that he could win this case.

8 We have talked about it for a long time,
9 and he has finally decided just to throw himself on the
10 mercy of the Court.

11 My own feeling is, Judge, that based on what
12 he has told me and also based on all of the tapes -- all
13 of the transcripts I have read, that he actually just put
14 his toes in the water in this thing and got out of it
15 almost immediately. I think he was forced into this
16 by the fact that after he got out of jail, Judge,
17 there wasn't a job he could keep for more than maybe a
18 week, when somebody would come up with his prison record,
19 and he would lose it. He went down to Florida. He
20 tried every kind of thing. He went back to con-
21 struction. He tried all kinds of jobs. He couldn't
22 keep them.

23 Perhaps when this thing came up, and he saw
24 a little money available, he fell to the temptation.

25 I can't say what I would do if I were in his

2 place, under those circumstances.

3 I think it was a period of about seven or eight
4 years, the man couldn't keep a job, and who knows what
5 anyone would do under those circumstances.

6 So, as I say, we have been talking about it back
7 and forth, and he has finally come to the conclusion that
8 he would like to plead guilty, and of course, he would
9 expect some softening on the part of the Attorney General
10 and some mercy from your Honor.

11 MR. LOPEZ: Your Honor, may I just alert Mr.
12 King? May I say something, Mr. King?

13 MR. KING: Certainly.

14 MR. LOPEZ: Just to help out on this matter:
15 Mr. Gamba, of course, under the applicable statute,
16 would be a second felony offender in this matter, since
17 he has a previous Federal conviction on this matter.
18 We do not know whether or not the U.S. Attorney's office
19 intends to file an information against him.

20 MR. CURRAN: We have already filed an information.

21 THE COURT: I thought you had.

22 MR. CURRAN: Of course, we have little or no
23 discretion in that area under the statute. That was filed
24 pre-trial, under 51 --

25 THE COURT: As I recall, it was filed immediately.

2 prior to the trial.

3 MR. LOPEZ: I wasn't aware of that. But I think
4 he understands that his exposure here would be fifteen
5 to thirty, with little discretion as far as the Court is
6 concerned.

7 THE COURT: I don't think there is any minimum.

8 MR. CURRAN: Your Honor, the maximum sentence
9 is thirty years. The exposure under the new law is zero
10 to thirty.

11 THE COURT: Yes. There is no minimum.

12 MR. LOPEZ: Another request that was made is
13 this:

14 Should he enter a plea at this time -- Mr. Gamba
15 was a bona fide defendant in this case until he reconsidered
16 and he reassessed his situation. He has asked that if
17 he does enter a plea of guilty that he not be questioned
18 by law-enforcement officers in connection with this case,
19 either State or Federal, whatever we have control over,
20 that he not be called as a witness and that any statement
21 that he gives to the Probation Department be considered
22 confidential and not turned over to anyone.

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2 THE COURT: Well, first of all, Probation
3 Department is confidential. Any statement he makes to
4 Probation is solely for my eyes unless his attorney requests
5 to see it.

6 MR. LOPEZ: Right.

7 MR. KING: Well, if I may amplify Mr. Lopez'
8 remarks, the gist of my client's wishes, as outlined by
9 Mr. Lopez, is he under no circumstances told me that he
10 wants to be placed in the posture of an informer in any
11 way, and I specifically asked him that. I said that
12 "You may be asked that, and I want to know what your po-
13 sition is on that."

14 He said, "Under no circumstances."

15 So we want to be candid with your Honor.

16 THE COURT: Sure. I understand.

17 MR. CURRAN: Your Honor, with respect to
18 Mr. Lopez and now Mr. King's statement, I think there
19 was a suggestion that your Honor would entertain a
20 direction that no federal government or state government
21 people talk to Mr. Gamba, should he plead guilty and the
22 plea be accepted. I respectfully submit, your Honor,
23 that that should not be done. I'm not saying
24 at this point that the government intends to call him or
25 doesn't intend to call him, but I think we have a right

2 to be open on that matter and handle it in the normal
3 way as the situation develops.

4 THE COURT: I don't think that I can give
5 a blanket instruction to the government not to talk to
6 your client, and I want you to make sure that he under-
7 stands that.

8 MR. KING: Well, of course, I can understand
9 your Honor's position and I understand Mr. Curran's posi-
10 tion. However, I thought it only fair that both Mr.
11 Curran and your Honor should know. My client has told
12 me -- and I am using his words -- under no circumstances
13 will he be cast in the position of an informer, and of
14 course I hope that both Mr. Curran and your Honor feel
15 that for that reason he will not be entitled to some
16 consideration.

17 I feel personally that he should be -- he
18 is shortening the trial, at least as far as John Gamba
19 is concerned.

20 THE COURT: I don't think that will really
21 shorten the trial. But I think -- I have to tell you:
22 the fact that somebody goes to trial instead of pleading
23 guilty -- he's got a right to go to trial, so don't
24 consider that.

25 MR. KING: Yes. I'm not faulting him for

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2 going to trial.

3 THE COURT: Nor am I.

4 MR. KING: I just want to, if I may, at the
5 risk of repeating myself, say that in view of the fact
6 that he does plead guilty at this point I think he's
7 entitled to some consideration, which I hope both Mr.
8 Curran and your Honor will bear in mind.

9 MR. LOPEZ: May I say something, Mr. King?

10 MR. KING: Sure.

11 MR. LOPEZ: Your Honor, we weren't really
12 seeing a direction from your Honor so much as far as
13 questioning Gamba is concerned. What we were looking
14 forward to was a representation by Mr. Curran, which
15 we would happily accept, coming from him or from Mr.
16 Phillips, that he would not be questioned. You see,
17 the problem is this: Gamba has been communicating with
18 all the defendants. He has been communicating with other
19 defense counsel. As lead attorney he is privy to our
20 confidences, and I think it would be grossly unfair if
21 midtrial he were now questioned by law enforcement or his
22 case would be handled in this type of case in the normal
23 way which Mr. Curran has.

24 I think, Mr. King, that Mr. Gamba's desires
25 are that if he is going to be placed in any position

2 where he would be questioned by law enforcement officials
3 or anything like that, or called as a witness, he
4 would not want to be placed in that position and
5 wouldn't enter a plea. Is that right?

6 MR. KING: That's right. He feels it would
7 be a betrayal at this point. Isn't that what you mean,
8 Mr. Lopez?

9 MR. LOPEZ: Yes.

10 MR. CURRAN: Your Honor, it seems to me
11 communications with counsel is a wholly separate issue.
12 All the government is saying that we will make no com-
13 mitments and we are in no position to make any commit-
14 ments that Mr. Gamba, should he plead, is going to be left
15 alone or not called as a witness.

16 THE COURT: I understand that.

17 As for communications with counsel, his and other counsel
18 in the case, that's strictly off limits and you know
19 that.

20 MR. CURRAN: Of course, your Honor, we
21 wouldn't inquire about that in any case, even if he
22 weren't a defendant.

23 THE COURT: All right. Mr. Lopez and Mr.
24 King, I think you ought to talk to the defendant and
25 explain what happened here, all right?

2 MR. LOPEZ: Fine.

3 THE COURT: Sit down and talk to him and
4 let's see then what his desire is.

5 MR. KING: Then what, Judge?

6 THE COURT: If he wanted to go ahead and
7 plead guilty we will do it right here in the robing room,
8 if he is willing to waive doing it in public.

9 MR. KING: And to make plain that the
10 Attorney General doesn't want to relinquish its right to
11 question him.

12 THE COURT: Absolutely.

13 MR. KING: But of course I am going to tell
14 him that he doesn't have to answer --

15 THE COURT: Mr. King, I can't phrase how you
16 are going to talk to your client. I wouldn't get into
17 it. You go ahead and talk to him, all right?

18 MR. KING: All right, Judge, I appreciate
19 your patience.

20 THE COURT: Oh, that's what I am here for.

21 (Pause.)

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2 MR. FISHER: Good morning, Judge.

3 THE COURT: Good morning, Mr. Fisher. I
4 understand you are covering for Mr. Sunden.

5 MR. FISHER: Yes, your Honor.

6 THE COURT: I don't know if you know it, but
7 I understand his client was taken ill last night.
8 There is going to be an examination, which should be
9 taking place right now. I don't know what the results
10 are. Since his lawyer, Mr. Sunden, is not here, I have
11 to tell somebody. You are it.

12 MR. FISHER: I don't think it would be
13 appropriate to waive his presence without specific
14 authority from the defendant himself, your Honor.

15 THE COURT: Yes, I am afraid so.

16 MR. FISHER: The examination is being done
17 now?

18 THE COURT: The doctor is due to arrive at
19 10:30. That is as much as I know.

20 MR. FISHER: I was told he had stomach
21 pains this morning and that he was in a hospital facility
22 there.

23 THE COURT: That is what I was told also.

24 MR. FISHER: If you would like, I will try
25 to get in touch with Mr. Sunden and get him over here as

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2 soon as possible. I think even if Mr. Sunden were
3 here, your Honor --

4 THE COURT: I don't think he could waive it
5 either.

6 MR. FISHER: No, I don't think so.

7 While we are here, may I raise another matter
8 with your Honor?

9 THE COURT: Yes.

10 MR. FISHER: Your Honor, I subpoenaed Frank
11 Rogers, Assistant District Attorney Richard Miller and
12 Sergeant O'Boyle --

13 THE COURT: Hasn't he been here already?

14 MR. FISHER: Yes -- for this morning, asking,
15 in substance, for their testimony and any documents
16 relating to debriefings of the witness John Barnaba, including
17 but not limited to tape recordings, notes and
18 memoranda of any and all debriefing or interviews.

19 Mr. Curran advised me this morning that he had
20 heard from Mr. Miller, that Mr. Miller is on trial
21 and would be here some time later today. That is fine
22 with me. I am not, however, releasing Mr. Rogers or
23 Mr. O'Boyle from the subpoena unless and until Mr. Miller
24 testifies in such a way where it is clear that their information
25 would only be cumulative. At the moment

2 I still regard all three under subpoena, your Honor.

3 MR. CURRAN: Your Honor, may I be heard on
4 that briefly.

5 THE COURT: Yes, sure. I gather, before
6 you are heard, that all the debriefing sessions were
7 turned over as part of the 3500 material.

8 MR. CURRAN: Your Honor, first, Mr. Miller
9 told me this morning that he had indeed tried to reach
10 Mr. Fisher by telephone this morning earlier, but Mr. Fisher
11 was not yet in his office, and he asked me if I would
12 speak to Mr. Fisher and relate the message which Mr.
13 Fisher just related.

14 With respect to this material, I think Mr.
15 Fisher said he was seeking testimony. As I under-
16 stand the rules and the law, he is only entitled to
17 material which is in the possession of the government.
18 I have given everything that I have. I have inquired
19 about other material and your Honor may recall I even
20 came up with some state court grand jury testimony which
21 I feel I probably did not have to turn over but did.

22 I don't know where this is going. I have no
23 other material. I specifically inquired about it.
24 We haven't used any in preparing for this witness, at least. I
25 haven't seen any or used any, and I suggest respectfully

2 your Honor, that this is a fishing expedition to rummage
3 through the files of the state prosecutor.

4 MR. FISHER: Heaven forbid.

5 MR. CURRAN: I don't mind their rummaging
6 through my files, but it seems to me we are going
7 pretty far afield.

8 MR. FISHER: Quite frankly, there is one
9 debriefing tape that has been turned over on Barnaba and
10 one wonders where there is only one of Barnaba and 17 of
11 Stasi in view of the fact that both were interrogated
12 by the same authority, by the same detectives and district
13 attorneys.

14 Further, I have been advised that there was
15 at some point a procedure initiated in Mr. Rogers'
16 office for taped debriefings of their informers. So
17 apparently there may be other tapes.

18 I know your Honor will recall that despite Mr.
19 Phillips' most diligent efforts notwithstanding, from
20 time to time suddenly there would be more tapes suddenly
21 discovered, and certainly Mr. Phillips cannot be blamed
22 if, as it appears, he was on reporting to the court
23 what was told by members of Frank Rogers' office. So
24 I think we ought to get on the record statements
25 directly from the source as to whether or not these tapes

2 or any more of them do exist.

3 This distinction that Mr. Curran suggests,
4 within the possession and control of the government,
5 No. 1, I don't think is a valid distinction for purposes
6 of this inquiry, since the government in terms of the case
7 against my client and the others in this case consists
8 both of Mr. Rogers' office and Mr. Curran's office,
9 and, second, we have a right to subpoena them in any
10 event.

11 THE COURT: Yes, but not to take testimony
12 in the middle of the government's case.

13 MR. FISHER: It would be a brief hearing.
14 For authority, there are two cases in the Supreme Court,
15 United States vs. Campbell, 1 and 2, 5 Lawyers' Edition
16 2d I think is the first Campbell case.

17 THE COURT: I will read it.

18 MR. FISHER: It indicates in certain cir-
19 cumstances with regard to 3500 material a hearing not in
20 front of the jury where the court is advised to take tes-
21 timonial evidence.

22 MR. CURRAN: Your Honor, we have, of
23 course, no objection to Mr. Fisher finding out whatever
24 he wants to find out. The only problem I have with the
25 procedure is we hope very much that it is not going to

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2 delay the orderly progress of the trial. Other than
3 that, if he wants to examine these people or talk to
4 them, I suppose it could be done during lunch hour or after
5 the end of the court day. Certainly we are not
6 trying to withhold anything from Mr. Fisher.

7 All I can say is I have given Mr. Fisher
8 everything I had and I even found some additional things
9 which I didn't have which I turned over immediately, as
10 your Honor knows.

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2B 2 MR. PHILLIPS: Your Honor, I have also spoken
3 to Mr. Miller, who said that he was going to be in the
4 process of picking a jury this morning in the State Court.
5 He did say that he would attempt to contact Mr. Fisher
6 and even appear at court here if he could during the
7 afternoon recess. He was even going to ask the Judge
8 for permission to come here.

9 He also stated to me that he would represent to
10 Mr. Fisher, and under oath too, if your Honor requested,
11 that all material, debriefing tapes, memoranda and every-
12 thing, had been turned over to the United States Attorney's
13 office, and we can in turn represent that that has in turn
14 been turned over to defense counsel. It consists of the
15 one tape that they have had.

16 THE COURT: What time do you expect him here?

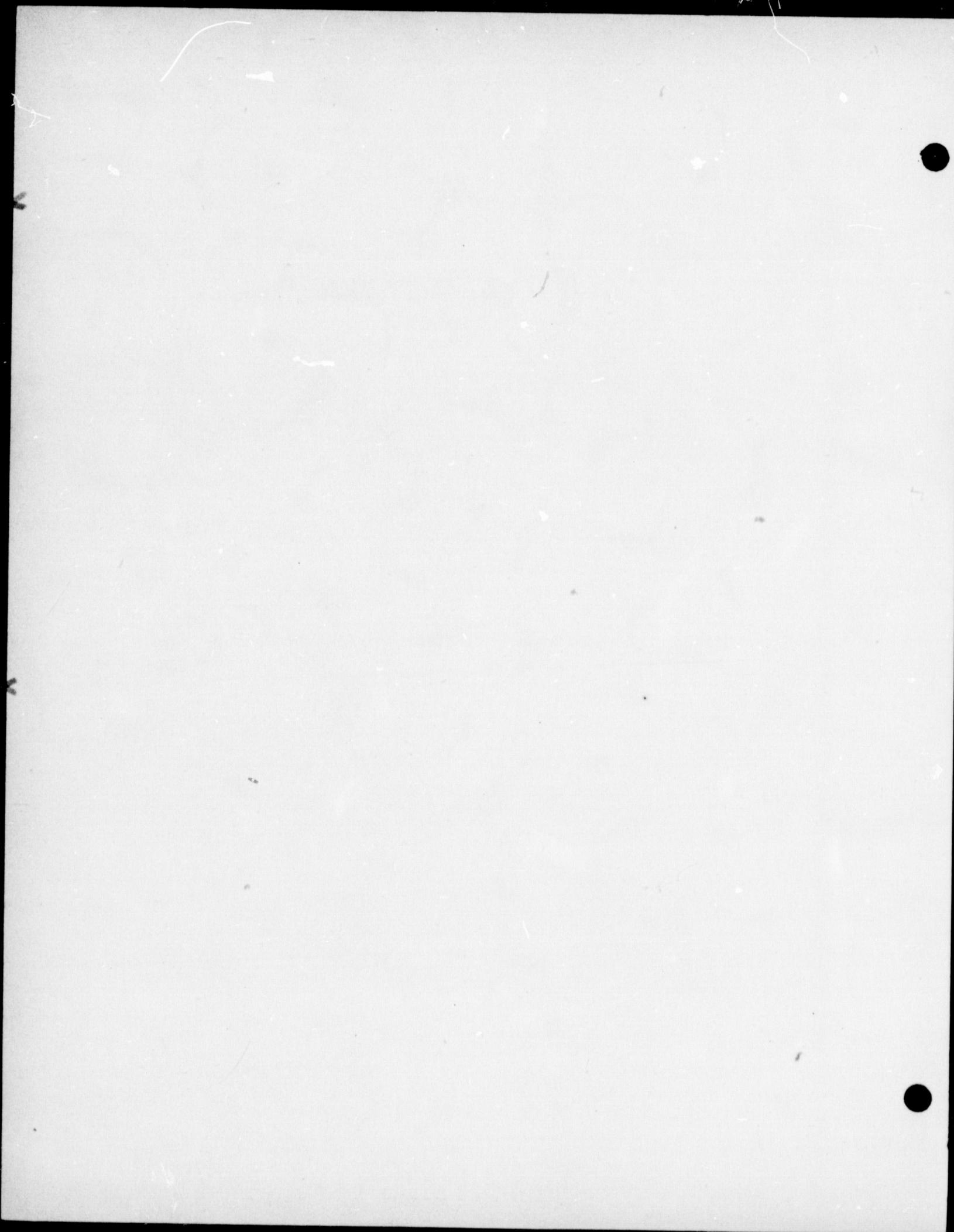
17 MR. PHILLIPS: I don't know, your Honor.

18 MR. CURRAN: He said just later in the day and
19 as soon as he could get here, your Honor. I had the
20 impression he was talking about late morning or early
21 afternoon.

22 THE COURT: I would assume that any hearing
23 would not require the presence of Mr. Alonzo.

24 MR. PHILLIPS: I am sure it wouldn't.

25 THE COURT: It's a matter outside the direct



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2 trial.

3 All right. We can't do anything about it right
4 now.

5 MR. FISHER: Right. I think it would be
6 brief, especially in view of Mr. Phillips' representa-
7 tion.

8 THE COURT: All right.

9 MR. FISHER: Thank you.

-10 MR. PHILLIPS: It seems to me, your Honor, if
11 Mr. Gamba is going to plead, we can take that plea now.

12 THE COURT: If he is. I am just wondering
13 whether we have given his counsel enough time to talk to
14 him.

15 MR. PHILLIPS: We can find that out right now.

16 THE COURT: Yes. I was about to ask.

17 (Pause.)

18 MR. KING: Judge, it is my understanding, and
19 it's only an understanding, I don't know it as a fact,
20 that two defendants in this trial who have pleaded guilty
21 have received a stipulation that they will not be called
22 as witnesses.

23 THE COURT: Not before me, they haven't.

24 MR. KING: Lentini and Delvecchio.

25 THE COURT: Not before me, they haven't.

1 hp3

2 MR. KING: Is that true, Mr. Phillips?

3 MR. PHILLIPS: I recall that I said to their
4 attorney, Mr. Gallina, at the time that they pleaded guilty,
5 we at that time had no intention of calling them as a
6 witness. That is the representation I made and I will
7 make that representation right now with respect to Mr.
8 Gamba. At this time we have no intention of calling Mr.
9 Gamba as a witness. But that as far as the government will
10 go in that respect.

11 MR. KING: There was no stip?

12 MR. PHILLIPS: There was no stipulation, no.

13 THE COURT: All right. I want you to talk to
14 your client, but I am going outside and ask all of defense
15 counsel to agree that I can go --

16 MR. KING: Judge, can I just go one further
17 step?

18 THE COURT: Let me finish.

19 MR. KING: I am sorry.

20 THE COURT: I want an agreement from all of the
21 defense counsel that I can go in and explain to the jury
22 that we are working, it's just that something has come up
23 and they are not being called out, we are just not ignoring
24 them.

25 MR. LOPEZ: Yes, Judge. I think that is a good

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2 idea.

3 THE COURT: You want to say one more thing to
4 Mr. Phillips?

5 MR. KING: Yes.

6 THE COURT: Go ahead.

7 MR. KING: Mr. Phillips, you say at this time
8 you have no intention of calling him. Can you project it?

9 I want to particularly direct your attention
10 to the fact that all he is accused of in your indictment
11 is having received three kits of heroin and no money was
12 exchanged. I see him as a passer-backer here. I, of
13 course, not knowing your case, can't see why you would want
14 to call him at all.

15 Could I go one step further with you and say
16 that as far as you know you won't call him.

17 MR. PHILLIPS: I make the same representation
18 I made to Mr. Gallina, Mr. King. At this time the govern-
19 ment has no intention of calling him as a witness.

20 MR. KING: And that is as far as you can go?

21 MR. PHILLIPS: That's correct.

22 MR. KING: All right. I won't take any more of
23 your time, Judge.

24 THE COURT: Let me just take care of the problem
25 with the jury.

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2 (In open court; jury not present.)

3 THE COURT: As perhaps you all know, we have been
4 working in the robing room. At the same time, however,
5 the jury is sitting in a juryroom which is relatively
6 sparse and Spartan.

7 I would like to find out if anyone has objection
8 to me going into the juryroom and explaining that we are
9 working and we are not just ignoring them. Any objection?

10 MR. PHILLIPS: No objection, your Honor.

11 THE COURT: All right. I understand that the
12 defendant Alonzo is being examined right now in West Street.
13 The examination was supposed to start at 10.30 today.
14 I will be calling over to find out what the story is with
15 him and I will be back and let you all know.

16 Mr. Sunden isn't here, right?

17 MR. FISHER: No, your Honor.

18 THE COURT: All right. Mr. Fisher, as I recall
19 it, you were covering for him yesterday.

20 MR. FISHER: Yes, your Honor, and today.

21 THE COURT: And today, yes. As soon as I get any
22 word I will let you know.

23 (Recess.)

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3a 2 (In the robing room.)

3 THE COURT: All right, gentlemen.

4 MR. PHILLIPS: We have a question of resolving
5 the problem of continued representation of Henry Salley,
6 your Honor. It seems to us that Salley ought to have
7 counsel appointed for him from among those counsel who
8 are still in the case and preferably those counsel who
9 are familiar with Salley's aspect of the case.10 Salley has not been mentioned yet in the course
11 of the government's proof, but, as I think your Honor
12 knows, it is the government's contention that he was a
13 customer from Washington, D.C., who received quantities of
14 heroin along with other people from Washington and went
15 back to Washington.16 In that respect, Warren Robinson is another
17 defendant from Washington. I have spoken to Mr. Leighton,
18 who was appointed to represent Robinson, and both Mr.
19 Leighton and I agree that there is a potential conflict
20 in representing both Mr. Robinson and Mr. Salley.21 However, with respect to Mr. Greene, Al Greene
22 and Hattie Ware, or Mr. Alonzo, whose counsel would be
23 familiar with the testimony that would be elicited against
24 Mr. Salley, I don't think there would be a conflict of
25 interest, although I have not consulted with those particular

2 attorneys.

3 I would like to point out that the testimony and
4 the proof with respect to Mr. Salley is no secret to Salley
5 or any of the other defendants or their attorneys, since
6 we have turned over a debriefing transcript, or tapes,
7 rather, of Mr. Harry Pannirello, Mr. John Pannirello
8 and James Provitero, who would be the principal witnesses
9 against Mr. Salley, and a transcript has been made and
10 Xeroxed and distributed to defense counsel.

11 We would also be prepared to make available to
12 whatever counsel is going to represent Mr. Salley other
13 material to assist him in preparing the defense.

14 Mr. King has been working very closely with Mr.
15 Segal, who represented Mr. Salley, and, as your Honor knows,
16 he has indicated a possibility that Mr. Gamba will plead
17 guilty.

18 I spoke to Mr. King several minutes ago. Mr.
19 King wanted to wait until this afternoon before his client
20 enters a plea or makes a decision as to whether he is going
21 to enter a plea, so that I think we can only presume --

22 THE COURT: Is there any potentiality of conflict
23 between Mr. Salley and Mr. Gamba?

24 MR. PHILLIPS: No, your Honor. The only person
25 I think as to whom there would be a potential conflict is

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2 Mr. Robinson.

3 THE COURT: Mr. Lopez, do you want to be heard?

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2 MR. LOPEZ: Well, of course, I don't know
3 what specific standing I have in this matter.

4 THE COURT: Do you want to do it outside
5 where everybody can be heard?

6 MR. LOPEZ: Yes, I think so, your Honor.
7 It would be better.

8 THE COURT: All right. Let's go out.

9 (In open court.

10 THE COURT: As you may or may not know, Mr.
11 Murray Segal passed away yesterday afternoon, after
12 court. I had a phone call from his brother. Ap-
13 parently he went back to the office, collapsed and died
14 there -- which leaves the defendant Henry Salley without
15 counsel right now.

16 I have been reviewing the recent Second
17 Circuit case United States of America vs. Ronald DuBery.
18 It was decided on November 7, 1973.

19 In that case the Court of Appeals for this
20 circuit indicated that where there is no prejudice by a
21 joint representation, a joint representation is permissible.

22 Now, I heard already the opening statement
23 of the government. I understand that certain debrief-
24 ings of the witness against Mr. Salley have been turned
25 over to defense counsel, is that correct?

2 MR. PHILLIPS: That's correct, your Honor.

3 THE COURT: All right. Now, I would
4 appreciate it if they would be turned over to me. I
5 don't have them yet.

6 MR. PHILLIPS: Does your Honor want the tape
7 or the transcript?

8 THE COURT: I don't want the tape. I
9 want the transcript. My ears have been offended enough
10 with the tapes.

11 I don't need it right this instant.

12 Mr. Phillips, I understand from your represen-
13 tation to me inside that you feel that there would be no
14 conflict of interest between Mr. Salley, who was represented
15 by Mr. Segal, and certain other defendants here, including
16 the defendant John Gamba. I don't know, since I don't
17 have the tapes.

18 Mr. King, have you reviewed the transcript
19 of the tapes which the government tells me were turned
20 over?

21 MR. KING: I am sorry, Judge.

22 THE COURT: Have you reviewed the transcript
23 of the tapes? Which tape is this?

24 MR. PHILLIPS: The debriefing tape of Harry
25 and John Pannirello, James Provitero, and --

2 MR. KING: Yes, I have.

3 THE COURT: Do you see any potential con-
4 flict between your representation of Mr. Gamba and your
5 representation of Henry Salley?

6 MR. KING: Well, there is a possibility of
7 it, Judge. I am not fully prepared to answer that
8 right now.

9 THE COURT: All right. Mr. Phillips,
10 is there any other counsel that you think wouldn't face
11 this type of potential conflict.

12 MR. PHILLIPS: As I indicated in the
13 robing room, your Honor, the only attorney I can imagine
14 a potential conflict would be Mr. Leighton representing
15 Mr. Robinson, other than that I do not know of any
16 potential conflict.

17 MR. KING: If your Honor please, may I have
18 a representation from the government as to whether the
19 transcript of the tapes that I received are the complete
20 debriefing of the tapes in the government's possession?

21 THE COURT: Of these three people?

22 MR. KING: Yes.

23 THE COURT: I believe that representation
24 can be made.

25 MR. PHILLIPS: Your Honor, may Mr. King and

2 I approach the bench a minute?

3 THE COURT: Sure.

4 (Conference at the bench, off the record.)

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5 (In open court.)

6 THE COURT: All right. A conference was
7 held at the bench off the record. Mr. King indicated
8 that he sees no conflict between representing Mr. Salley
9 and Mr. Gamba.

10 However, I think it appropriate that we not
11 go forward right at this moment. I want Mr. King
12 to have the opportunity to talk to Mr. Salley.

13 Mr. Salley, you are present, right?

14 Mr. Gamba is also present.

15 I think Mr. King ought to have the oppor-
16 tunity to talk to both and I think also, Mr. King, you
17 ought to have the opportunity to go through the transcrip-
18 tion, this transcription, again, just to make sure that
19 there will be no conflict.

20 Under the circumstances, unless --

21 MR. SIEGEL: Your Honor, if I could inter-
22 rupt at this point, while the conference at the bench
23 was going on Mr. Salley approached me and asked me to ask
24 the court if he may speak to the court himself in pri-
25 vate in reference to this matter.

2 THE COURT: It is going to have to be on the
3 record, it is going to have to be in the presence of the
4 United States attorney. If he wants to do it in the
5 robing room, yes.

6 MR. SIEGEL: Yes, I think he does want that,
7 your Honor.

8 THE COURT: All right. Somebody stood
9 up over here.

10 MR. FISHER: As an amicus curiae, if your
11 Honor would permit, I would invite the court's attention
12 to United States v. Glasser, a Supreme Court case, where,
13 if my recollection is correct, a very similar situation
14 occurred, A lawyer died in the middle of a trial and
15 the court did what your Honor is hoping to do here and
16 there was an objection on the part of one of the de-
17 fendants who was thus jointly represented, and as I recall,
18 your Honor -- it's been a while since I read it -- the
19 Supreme Court reversed.

20 THE COURT: All right. Thank you.
21 We will take this on the record inside.
22 Mr. Salley, come on in.

23 MR. ROSENBERG: Your Honor, may I sug-
24 gest if this defendant is going to go inside to speak
25 to the court in the presence of the United States attorney

2 he should have some counsel with him.

3 THE COURT: Yes, I agree. Mr. King, I
4 suspect, is coming in with him.

5 MR. ROSENBERG: Good enough.

6 THE COURT: All right.

7 (In the robing room.)

8 THE COURT: All right, Mr. Salley.

9 DEFENDANT SALLEY: My problem, Mr. Segal had
10 looked back into something, all my witness and stuff, that
11 Mr. King, he really couldn't go back and get all my wit-
12 ness that I have. The way I started, I have to start
13 all over with somebody. See, right now he couldn't get
14 in contact with my witnesses. Like yesterday I
15 gave him the phone numbers, everything, went back
16 into whole lots of stuff.

17 THE COURT: We will give you enough time to
18 get the defense realigned. Don't worry about that.
19 I am not suggesting that we are going to go on right
20 away. You will have time to consult with Mr. King,
21 give him the phone numbers, and so on and so forth, the
22 same way that you did with Mr. Segal.

23 You understand?

24 DEFENDANT SALLEY: Yes, sir.

25 MR. KING: Judge, I don't think that in all

2 the conferences that Mr. Murray Segal had with Mr. Salley,
3 that I even attended one of them. I haven't the slightest
4 notion of what they talked about.

5 I think in all fairness to Mr. Salley I don't
6 think I could properly fill in for the late Mr.
7 Segal. Despite the fact that there may be no con-
8 flict --

9 THE COURT: I understand.

10 MR. KING: -- I would say that I have the
11 most sketchy idea of what Mr. Salley's case is about, and
12 when I am saying that I am overstating it. I don't think
13 it would be fair to him and certainly I would feel pretty
14 guilty about it myself. I don't think that I would
15 be giving him a fair representation, even though
16 assuming there is no conflict whatsoever.

17 THE COURT: I understand. So you would
18 like to decline any assignment at this time, is that
19 correct?

20 MR. KING: For Mr. Salley, yes.

21 MR. PHILLIPS: Your Honor, I can represent
22 that the first witness that is going to mention
23 Mr. Salley's name will not appear until after Mr. Barnaba
24 testifies, and his testimony is going to take some time.
25 We even have several more witnesses before Mr. Barnaba

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2 testifies, none of whom will mention Mr. Salley.

3 Mr. Barnaba will not mention Mr. Salley either.

4 THE COURT: So there will be some period
5 of time between now and then?

6 MR. PHILLIPS: Yes, sir.

7 THE COURT: I think under all the circumstances,
8 Mr. King, you can get to talk to MR. Salley between now
9 and the time that he is mentioned in the case. I will
10 let the assignment stay the way it is right now.

11 I am going to adjourn from now until after
12 lunch, until 2 o'clock. I want you to talk to Mr. Salley,
13 Mr. Gamba, and review that transcript, find out if there
14 is any conflict, and if so, to tell me about it. You
15 understand?

16 MR. KING: Judge, I am telling you now that
17 even if, as I started to say before, even if I find
18 there is no conflict, I don't see how at this point I
19 could take up Salley's burden in addition to the one that
20 I have. Believe me, it's a tough one. I just
21 don't feel I could do justice to it.

22 I will talk to him, Judge, as your Honor has
23 directed, but I don't want to raise any false hopes
24 here.

25 THE COURT: I understand.

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2 Mr. Panzer is appointed, isn't it?

3 MR. PHILLIPS: Yes.

4 THE COURT: I am going to ask Mr. Panzer
5 to do the same thing.

6 MR. PHILLIPS: To assist Mr. King?

7 THE COURT: To see if he has a conflict.

8 He will have over two hours to talk to the clients
9 and to review this transcript, which apparently counsel
10 have had.

11 MR. PHILLIPS: That's correct, your Honor.

12 MR. LOPEZ: May I just interject, your Honor?
13 We have one transcript available and that is the
14 Harry Pannirello transcript, I think, one, two and three
15 reels. However, there should be another transcript
16 made available to Mr. King of Jimmy Provitero.

17 Isn't that correct, isn't there a transcript
18 of Jimmy Provitero, a tape on Jimmy Provitero?

19 MR. FORTUIN: There is a tape. We have
20 received no transcript.

21 MR. LOPEZ: You are also intending to call
22 Johnny Pannirello. Isn't there a tape there too?

23 MR. PHILLIPS: These tapes were turned
24 over about four weeks ago, four, five weeks ago, and it
25 was left up to the option of defense counsel if they

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2 wanted to make a transcript. - I understand a transcript
3 was made of the Harry Pannirello tape, which we have had
4 Xeroxed and turned over to defense counsel.

5 THE COURT: All right. How long are
6 the tapes?

7 MR. FORTUIN: Provitero would be the remain-
8 ing tape. Provitero I would say would be 45 minutes.

9 MR. LOPEZ: How about John Pannirello?

10 MR. FORTUIN: I recall him being shorter.

11 THE COURT: Let me go out and also alert Mr.
12 Panzer to the same situation and we will go on from
13 there.

14 I am not asking anyone to make a firm decision
15 now. I want to give you time.

16 MR. KING: Judge, there is just one fur-
17 ther thought that occurs to me. I recall Mr. Curran
18 saying -- and correct me if I am wrong -- when he handed
19 over to me the Harry Pannirello Xerox -- wasn't it your
20 office I got it from?

21 MR. PHILLIPS: It was Mr. Curran's office.
22 Mr. Engel or Mr. Fortuin probably are the ones who turned
23 it over.

24 MR. KING: In any event, I said to you they
25 were disjointed -- I remember using that word -- and

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2 you said "That's what we have." I got the impression
3 that we don't have the full transcript of Harry Pan-
4 nirello.

5 MR. CURRAN: The only conversation I had with
6 Mr. King about 3500 material was Barnaba's state court
7 grand jury testimony, but I gave you and all the other
8 lawyers 11 pages and said that I was not giving the
9 rest, that I was giving the balance to the judge.

10 MR. KING: You are right. I stand cor-
11 rected.

12 MR. CURRAN: If the judge gave it to you,
13 that was his decision.

14 MR. KING: But you see, I don't have a full
15 record. That is my trouble.

16 THE COURT: I understand.

17 MR. PHILLIPS: You have listened to all the
18 tapes that relate to both Mr. Gamba and Mr. Salley though.
19 That is what we are trying to say, Mr. King.

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4B 2 THE COURT: All right.. Let me go out and alert
3 Mr. Panzer.

4 MR. KING: You say you are going to adjourn until
5 two now, Judge?

6 THE COURT: Yes, but don't leave until I alert
7 Mr. Panzer.

8 All right, Mr. Salley. You can go.

9 (In open court.)

10 THE COURT: Mr. Panzer, I would appreciate it
11 very much, sir, if during the break you consider whether
12 there would be a conflict between your client, Mrs.
13 Ware, and the defendant Salley. I want you to talk to
14 both of them and review the Pannirello things which I
15 understand --

16 MR. PANZER: Your Honor, I anticipated this and
17 I read the Pannirello transcript very carefully last night
18 and I anticipate a conflict on my cross-examination.

19 THE COURT: You do?

20 MR. PANZER: Yes. There are some matters
21 that I may want to go into with Pannirello that may affect
22 other defendants in this case and that would limit my
23 cross-examination.

24 THE COURT: I don't want to, I assure you.

25 MR. PANZER: I would like to help the Court out

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2 if I could, but I think it would limit my effectiveness,
3 your Honor.

4 THE COURT: All right. Mr. Schwartz:

5 MR. SCHWARTZ: Your Honor, I think I would be in
6 the same position.

7 THE COURT: I don't want you to give the theory
8 of your case away right now. All you have to do is represent
9 that you do have a problem. And you have?

10 MR. SCHWARTZ: Yes.

11 THE COURT: All right. Mr. Martin J. Siegel.

12 MR. SIEGEL: Your Honor, I do anticipate a con-
13 flict in this case.

14 THE COURT: All right. Mr. Leighton, I think
15 somebody suggested that you most likely do.

16 MR. LEIGHTON: I think the government spoke on
17 my behalf.

18 THE COURT: Mr. Dowd.

19 MR. DOWD: I think I might have a problem,
20 Judge.

21 THE COURT: Mr. Curley, I guess you will have a
22 problem with your boss, who has a rule, as I understand
23 it, that you cannot accept.

24 Mr. Warner.

25 MR. RICHMAN: Mr. Warner is not here, your Honor.

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2 I was covering for him today....

3 Mr. Richman, speak for yourself then.

4 MR. RICHMAN: I think if I represented anybody
5 else in this case it would interfere with my strategy in
6 the defense of Mr. Tolopka.

7 THE COURT: All right.

8 MR. RICHMAN: Unless, of course, the U.S.
9 Attorney wishes to sever Mr. Tolopka.

10 THE COURT: You always try, don't you.

11 MR. LOPEZ: Your Honor, may I make a suggestion?

12 THE COURT: Sure.

13 MR. LOPEZ: Outside of the Harry Pannirello
14 transcript, which has been transcribed and Xeroxed and
15 given I believe to each of defense counsel, we know that
16 there is a tape on Jimmy Provitero and we also know that
17 there is a tape on John Pannirello, which are the three
18 witnesses that the government intends to call on a specific
19 side of the case.

20 Would it be possible to turn over to defense
21 counsel at this time all the 3500 material in connection
22 with Harry Pannirello and John Pannirello and Jimmy
23 Provitero? In that way defense counsel will be in a
24 better position to appraise the situation as far as Salley
25 is concerned. We are only talking about a few days.

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2 The government won't be giving up its case. They have
3 already indicated that they are calling those three
4 witnesses.

5 In that way we will all be able to see that
6 3500 material and if any of defense counsel can be of
7 assistance to the Court they will be in a better position
8 to appraise the situation. At this point we are asking
9 some defense counsel here to ascertain whether they can
10 represent Salley without even receiving that 3500 material.
11 I think before they can make that assessment we should get
12 that 3500 material, discuss it, and then make that representa-
13 tion to the Court, because as far as conflict is concerned,
14 I think the position of conflict lays with the defendant
15 specifically after he knows of all the facts.

16 That is a suggestion, your Honor.

17 THE COURT: Yes, Mr. Phillips.

18 MR. PHILLIPS: Your Honor, I can state that the
19 tapes, the debriefing tapes of the individuals that Mr.
20 Lopez makes reference to, comprise probably 80 per cent of
21 the 3500 material with respect to those witnesses and
22 certainly cover everything that is included in the rest
23 of the 3500 material.

24 I would be prepared to consult with your Honor
25 and any counsel that thinks there may be a potential

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2 conflict in representing their client and Henry Salley as
3 to specifically what the evidence would be against their
4 client that is yet to come as well as against Mr. Salley,
5 in the same manner that I did with Mr. King at the bench
6 before your Honor, and in even more detail than that.
7 However, I don't think it's necessary to turn over all
8 the 3500 material to accomplish that.

9 MR. LOPEZ: Your Honor, then it must be the
10 20 per cent that counts, because if it wasn't for that
11 20 per cent I could name at least three or four defendants
12 that shouldn't even be sitting here, because we listened
13 to 80 per cent of the 3500 material and we are still
14 wondering what we are doing here.

15 THE COURT: You, Mr. Lopez?

16 MR. LOPEZ: Yes, I am Mr. Lopez.

17 THE COURT: No, no. Are you one of them?

18 MR. PHILLIPS: I would also, if your Honor would
19 so desire, be prepared to talk to your Honor in camera
20 with respect to the evidence against Mr. Salley -- I don't
21 think it's a great surprise, in any event -- but the
22 evidence against Mr. Salley as opposed to any of the other
23 defendants.

24 THE COURT: Look, right now I have asked Mr.
25 King to do certain things to see whether he can accept

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2 the assignment. I would suggest that we give him the time
3 to do it. Under the circumstances, we will adjourn
4 until two o'clock.

5 By the way, has the defendant Alonzo arrived
6 yet?

7 MR. FISHER: Yes, your Honor, he has.

8 THE COURT: All right. Let's come back here at
9 two o'clock.

10 MR. ROSENBAUM: Your Honor, just before we
11 adjourn for lunch, I respectfully request that any 3500
12 material with reference to Agent Torrey Shutes be submitted
13 to me, even though Officer Shutes may not take the stand.

14 I am specifically referring to Mr. Phillips'
15 redirect with reference to my client. A question was
16 asked whether or not my client ever spoke about a quarter
17 kilo of heroin to Agent Torrey Shutes and the answer was
18 yes, he did. With respect to that, your Honor, I would
19 like to get the 3500 material.

20 THE COURT: I don't think what you are driving
21 at is 3500 material. 3500 refers only to a contemporaneous
22 statement made by a witness who takes the stand. If Agent
23 Shutes is not going to take the stand then it does not
24 refer to him.

25 MR. ROSENDAUM: I respectfully request I need

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2 notes, debriefing notes, or any other memoranda Agent
3 Shutes may have made at the time.

4 MR. PHILLIPS: Your Honor, those were already
5 turned over as 3500 material.

6 THE COURT: Anything Mr. Shutes said has already
7 been turned over?

8 MR. PHILLIPS: Yes, your Honor.

9 MR. CURLEY: Your Honor, on the point about
10 the dual representation, I would just like to mention two
11 matters.

12 Defense counsel will probably make argument
13 at the appropriate time about whether there is one or more
14 conspiracies in this case and whether the indictment is
15 defective. I think that is a problem to be considered.

16 If a lawyer will argue that he is a part of one
17 conspiracy, he is representing someone who will argue as
18 part of a separate conspiracy, it will be the same argument
19 that will be made before the jury, although in a factual
20 and not in a legal setting.

21 Secondly, sometimes defense counsel is supplied
22 with a type of Pinkerton charge which makes all defendants
23 responsible for the acts of other defendants, regardless
24 of when they enter conspiracies and regardless of whether
25 or not there is otherwise a conflict of interest. Perhaps

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2 the government would give us some guidance on what type of
3 charge they are going to request or what type of theories
4 they will accept before asking another lawyer to represent
5 a defendant with an interest that would be diverse, although
6 there may not be an apparent conflict of interest.

7 THE COURT: The only person we are involved
8 with right now is Mr. King. Let's give him an opportunity.
9 We keep eating into his time right now.

10 See you all back here at two o'clock.

11 (Luncheon recess.)

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2 A F T E R N O O N S E S S I O N

3 2.00 P.M.

4 (Jury not present.)

5 THE COURT: Mr. King, you are relieved of any
6 assignment as to the defendant Salley.

7 MR. KING: Thank you, sir.

8 THE COURT: Gentlemen, what I intend to do is
9 to arrange for Mr. Salley, in view of the fact that he has
10 not been mentioned in any testimony up to today, to have
11 new counsel appointed. I am trying right now to find
12 counsel.13 Mr. Salley, you are to remain this afternoon.
14 Everybody else can leave.15 MR. ELLIS: Your Honor, I would object to that
16 procedure on behalf of Mamone. New counsel thrust into
17 our midst at this point, unfamiliar with what went on,
18 and the defendant Salley with less than the appropriate
19 degree of expertise, the spill-over effect of this will
20 prejudice every defendant in this courtroom, and I would
21 move that he be severed.22 THE COURT: No. Mr. Salley will have his own
23 counsel. If he wants to make a motion for severance,
24 that is something I will take up then.

25 All right, ladies and gentlemen.

2 MR. CURRAN: Your Honor, before the defendants
3 leave, would you inquire if they are all here?

4 (The roll of the defendants was called.)

5 (All answered present.)

6 MR. PHILLIPS: Before counsel are excused, may
7 we approach the bench with Mr. Panzer?

8 (At the bench.)

9 MR. PHILLIPS: Your Honor, in view of the fact
10 that we are not going to be sitting this afternoon with
11 the jury, it might be an appropriate and good time to take
12 up a question that has not been resolved, which we have
13 been discussing with Mr. Panzer, regarding the seizure
14 from the apartment of one Basil Hanson of a photograph
15 that we intend to introduce, which shows his client, that
16 is, Mr. Panzer's client, Hattie Ware, with the defendant
17 Butch Pugliese.

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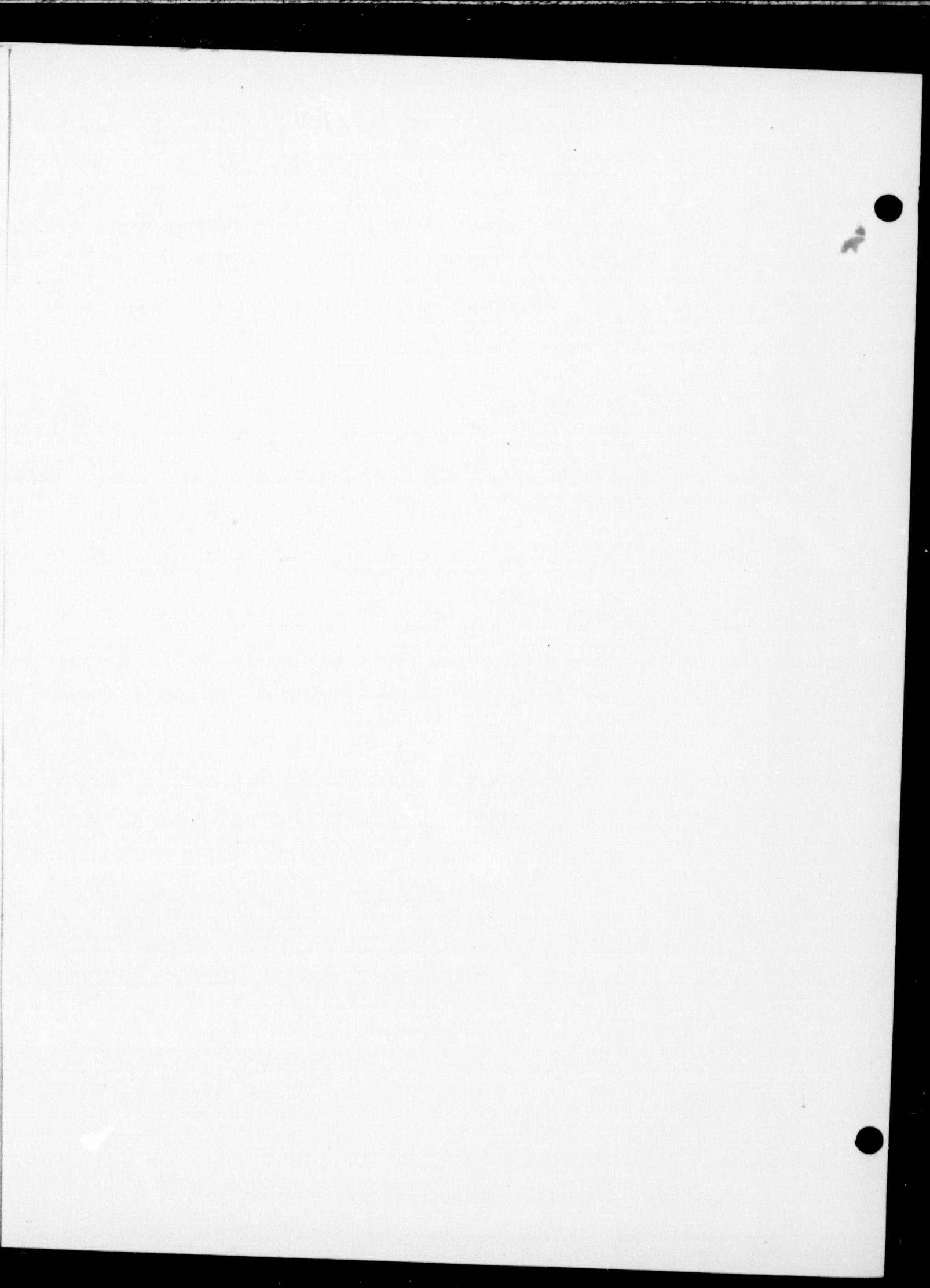
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2 Now, in my discussions with Mr. Panzer, he
3 is going to contest the lawfulness of the seizure of this
4 photograph, and there are basically two issues at stake,
5 one of which is whether or not his client has standing
6 to contest the legality of the seizure and the other is,
7 assuming she does have standing, whether the circumstances
8 under which the agents took the photograph constitute a
9 lawful seizure.

10 We submit that there will perhaps have to be
11 a hearing on this issue, and this afternoon might be as
12 good a time as any.

13 We would submit that Mr. Panzer has the burden
14 of going forward by showing through the testimony of the
15 client, Hattie Ware, that she had a possessory interest
16 in the apartment.

17 THE COURT: Right now, this is the first
18 time I have heard about it. There are no formal
19 motion papers or anything else, is that correct?

20 MR. PANZER: That's right. I found out
21 about this as this trial was progressing, and I think we
22 could work out a stipulation of facts and have your Honor
23 make a determination. I have some cases. It may
24 require a hearing, it may not.

25 THE COURT: All right. Let me go try

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2 to get Mr. Salley an attorney, and you fellows see if you
3 can work out a stipulation of facts and come back here
4 at 3:15.

5 MR. PANZER: I will tell you right now, we
6 can save some time. I do not intend to put Hattie Ware
7 on to establish any kind of burden. Whatever we
8 stipulate to, we will see what happens from that point.

9 THE COURT: All right. See what you
10 can do.

11 MR. PHILLIPS: All right.

12 (In open court.)

13 MR. ROSENBERG: With respect to Exhibit
14 No. 50, with respect to whether Vincent Papa was
15 in the photograph, Vincent Papa is over here now.
16 Normally it wouldn't be difficult to bring him back to-
17 morrow, but he is in a wheelchair. I would like,
18 if possible, to have the hearing to have the hearing with
19 respect to that sole issue. I would also like to
20 suggest that we have it out of the presence of the jury,
21 because to bring him up here in prison garb may defeat
22 what we are trying to accomplish.

23 I think the name Papa may be synonymous with
24 junk. In that vein, if you keep it away from the
25 jury. If we have the hearing outside the presence of

2 the jury, if this court will determine that it wasn't in
3 fact Vincent Papa, the court can give an instruction to
4 the jury that Exhibit 50 is stricken from the record and
5 wasn't Vincent Papa.

6 MR. PHILLIPS: Your Honor, I don't understand
7 that.

8 THE COURT: No, I don't understand it either.
9 The only way you can prove it is not Vincent Papa is to
10 have somebody take the stand and testify it is not Vincent
11 Papa, and then it is up to the jury. If you want to
12 bring somebody in to testify to that, that's for you.
13 But it is something that should be taken up on the
14 defense case.

15 All right, you are all excused.

16 (Recess.)

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2 (In open court.)

3 MR. PANZER: Your Honor, as this trial
4 was progressing I was informed by the United States
5 attorney that they intended to introduce a picture of
6 my client, Hattie Ware, and it was my understanding that
7 the picture was seized on West 225th Street. I
8 don't have the exact number or address of that particu-
9 lar location.

10 MR. PHILLIPS: 150, your Honor.

11 MR. PANZER: 150. The picture is a picture
12 of Miss Ware and another defendant in this case and I
13 believe a third party who I don't know.

14 We have entered into a stipulation. All
15 that I wanted to offer with respect to the standing
16 issue with respect to this picture and this apartment
17 was, No. 1, that the picture is a picture of Hattie
18 Ware; No. 2, that the apartment where this picture was
19 seized from, the lease for this apartment was in the name of
20 Hattie Ware. I do not intend to offer any other evi-
21 dence with respect to standing.

22 In addition to that, in addition to that
23 stipulation, we have also stipulated that Hattie Ware
24 lives at another apartment in the Bronx where she leases
25 that apartment and pays rent for that apartment.

2 I also stipulate that at the apartment at West 225th
3 Street Mrs. Ware did not pay rent.

4 That is on the issue of standing.

5 THE COURT: Let me just understand this.
6 Is this a sublease from Miss Ware to somebody --

7 MR. PANZER: I am not prepared to go that
8 far. All I am willing to stipulate for purposes of
9 this hearing is, one, that the picture is a picture of
10 her, and, two, that the lease is in her name.

11 THE COURT: But that she did not pay rent?

12 MR. PANZER: That's right. The government
13 could offer proof that she did not pay rent and I am willing
14 to concede that.

15 THE COURT: Are you in agreement on this
16 stipulation?

17 MR. PHILLIPS: Yes, we are.

18 MR. ENGEL: Your Honor, I think there is one
19 other point.

20 MR. PHILLIPS: The other thing is that Hattie
21 Ware was not in the apartment when the seizure of the photo-
22 graph took place.

23 MR. PANZER: That's correct.

24 MR. PHILLIPS: And in fact in the apartment
25 was a person by the name of Estelle Hansen when the

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2 seizure took place and another individual was observed
3 by the agents to go out of the apartment at the time
4 that the agents entered the apartment.

5 THE COURT: But that other person was not
6 Hattie Ware.

7 MR. PHILLIPS: That's correct.

8 MR. PANZER: That's correct.

9 THE COURT: All right.

10 MR. PANZER: I have a few cases.

11 THE COURT: All right. I understand that
12 the government has one witness that they intend to offer.
13 He was due here at 3:15. He is not here. I am not
14 blaming him. I gather he was called at the last
15 minute.

16 I would appreciate it if you gentlemen would
17 let the clerk know as soon as whatever witness it is ar-
18 rives. I will come right out and we will continue the
19 hearing. All right.

20 MR. PHILLIPS: Yes, your Honor.

21 THE COURT: You said you have cases?

22 MR. PANZER: Yes.

23 THE COURT: Do me a favor, make my life a
24 little easier. While we have this break would you note
25 them down with the citation on just a piece of yellow

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2 paper. I will take it from there.

3 All right. As soon as the witness arrives
4 we will go from there.

5 Mr. Phillips, if Mr. Pollack shows up will
6 you notify me about that also?

7 MR. PHILLIPS: Yes, your Honor.

8 (Recess.)

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2B 2 MR. PANZER: Your Honor, I notice that there are
3 some people in the courtroom. I don't know whether they
4 are agents or not, whether they are going to testify or
5 not. If they are, I would ask that they be excluded.

6 MR. PHILLIPS: We have no intention of calling
7 those agents, your Honor.

8 MR. ENGEL: Yes, we do, your Honor.

9 THE COURT: After you make up your mind would
10 you ask both of them to leave.

11 MR. ENGEL: You mean at trial?

12 MR. PANZER: I meant at trial or here.

13 THE COURT: Either place.

14 MR. PHILLIPS: All right.

15 M A R T I N J. M A G U I R E, called as a witness
16 on behalf of the government, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FORTUIN:

20 Q Agent Maguire, by whom are you employed?

21 A I am employed by the Drug Enforcement Administra-
22 tion Regional Office.

23 Q How long have you been so employed?

24 A Approximately two and a half years.

25 Q Your position is that of Special Agent?

1 hp2

Maguire-direct

2 A It is.

3 Q Directing your attention to the evening of
4 October 3, 1973, was there an occasion when you proceeded
5 to the address of 1380 University Avenue in the Bronx?

6 A Yes, there was.

7 Q Can you tell me what you did when you got there?

8 A We proceeded up to I believe it was Apartment
9 11-G and we knocked on the door. We had a federal arrest
10 warrant issued by the Southern District for one Hattie
11 Ware. We went to the apartment. I knocked on the door,
12 announced who I was and my purpose, and she wouldn't open --

13 Q What did you say?

14 A I said, "Hattie Ware" and she said, "Yes."

15 I said, "We are federal narcotics agents. We
16 have a warrant for your arrest. Would you open the door?"

17 She wouldn't open the door and we had to effect
18 a forced entry into the apartment.

19 We went into the apartment. I myself arrested
20 Hattie Ware and advised her of her rights.

21 Q When you say you advised her of her rights, what
22 did you say to her, do you recall?

23 A I read her her constitutional rights off a BND
24 Form 13A.

25 Q Do you have that form with you?

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Maguire-direct

2 A Yes, I do.

3 Q Would you show it to me?

4 A It's this form that's issued to all the agents.

5 Q Can you read the form as you read it on that
6 occasion?

7 A Yes.

8 MR. PANZER: I am going to object to this leading
9 your Honor.

10 THE COURT: I will permit it. Go ahead.

11 A It says, "Before we ask you any questions it
12 is my duty to advise you of your rights.13 "Do you understand that you have a right to
14 remain silent?15 "Do you understand that anything you say can and
16 will be used against you in court or other proceedings?17 "Do you understand that you have the right to
18 talk to a lawyer before we ask you any questions and to
19 have him with you during the questioning?20 "If you cannot afford or otherwise obtain a
21 lawyer and you want one a lawyer will be appointed for you
22 by the U.S. Commissioner or the Court and we will not ask
23 you any questions until he has been appointed.24 "If you decide to answer now with or without a
25 lawyer you will still have the right to stop the questioning

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Maguire-direct

2 at any time or to stop the questioning for the purpose of
3 consulting a lawyer.

4 "However, you may waive the right to advice
5 of counsel and your right to remain silent and you may
6 answer any questions or make a statement without consulting
7 a lawyer if you so desire."

8 Q At the time you read this card did the defendant
9 make any gestures or say anything?

10 A Yes, she did. She answered affirmatively
11 after every question.

12 Q After each question?

13 A Yes.

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2 Q Thereafter, what happened?

3 A We transported her back to 555 West 57th Street,
4 our headquarters, where she was processed by Agent Nolan.

5 Q When you say "processed" --

6 A Fingerprinted, photographed, personal history
7 and so on.8 Q To your knowledge, was she also interviewed
9 by Agent Nolan?

10 A Yes.

11 Q And were you present throughout that interview?

12 A Intermittently. Intermittently. I was running
13 back and forth, in and out of the questioning area.14 Q All right. Directing your attention to the
15 morning of October 4th, which would be the following morning
16 was there an occasion when you proceeded to 150 West 225th
17 Street?18 A Yes. Myself, three other agents, I believe, and
19 two uniformed New York City Policemen went to 150 West
20 225th Street, Apartment 2-H. We had a federal arrest
21 warrant for John Doe, alias Basil.22 Q Now what did you do when you got to the apartment
23 that evening?24 A We had the New York City Patrolmen knock on the
25 door so there wouldn't be any question as to who we were.

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Maguire-direct

2 It was approximately 3.15 in the morning.

3 THE COURT: Were the patrolmen in uniform?

4 THE WITNESS: Yes; they were, your Honor.

5 A (Continuing) We knocked on the door, announced
6 who we were, what our purpose was, at which time we heard
7 the peephole open and close, and we kept on banging on the
8 door, and there was no answer, so we effected a forced entry
9 to that apartment, at which time we went through a long
10 corridor, where I observed quite a vast amount of white
11 powder.

12 Q Where was this white powder located?

13 A The loose, scattered powder was in between the
14 hallway and a wardrobe room. There was a large amount of
15 packets of white powder that were sealed, on one side in
16 the wardrobe room, and on the left side they were unsealed.17 After a quick look around the apartment for any
18 people that we were looking for, I observed there was foot-
19 prints in the white powder leading from the white powder
20 that I had stepped into, in to an open window of the
21 wardrobe room, and we leaned over and saw white footprints
22 leading away from the apartment.23 Q Was there any person present in the apartment
24 that evening?

25 A Yes; there was. Estelle Hanson. She was

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2 standing to my right as I went through the hallway.

3 Q Were any objects seized that evening, either by
4 you or by any person in your presence?

5 A Yes; there was.

6 Q What was that?

7 A I believe it was a photo album, like a -- yes;
8 it was a photo album.

9 Q And where was this photo album located?

10 A It was in the bedroom. I think it was on a night
11 stand in the bedroom. I myself didn't seize it. I'm
12 just --

13 Q Who did seize it?

14 A Either it was Agent Moore or Agent Nolan. I
15 can't tell you who it was.

16 Q Other than the album, was anything else seized
17 that evening?

18 A Yes. All the various white powder, in the
19 packaged and loose form. I seized that myself. And nar-
20 cotics paraphernalia.

21 Q Now, the warrant that you had with you that
22 evening: do you know how that happened to be issued?

23 A Yes. It came down from an indictment issued
24 by the Southern District grand jury.

25 Q Okay. And the indictment that you had for

2 Hattie Ware that evening: do you know how that happened to
3 be issued?

4 A Through the same way.

5 Q Now, you stated that there was a person present
6 inside the residence at 225th Street.

7 A Yes.

8 Q What happened to her?

9 A We arrested her, and Agent Moore advised her of
10 her rights. We took her and the various narcotics and
11 narcotics paraphernalia that was seized down to our head-
12 quarters, where she was processed.

13 MR. FORTUIN: I have no further questions.

14 CROSS EXAMINATION

15 BY MR. PANZER:

16 Q Agent Maguire, on October 3, 1973, when you
17 arrested Miss Ware, how many agents were with you?

18 A Let's see. Two -- including myself, I believe
19 there were four or five. I can't tell you for sure.

20 Q And were you armed?

21 A Yes.

22 Q Was there a female agent with you also?

23 A Yes; there was.

24 Q Now, isn't it true that on that particular even-
25 ing you broke down the door to Miss Ware's apartment?

2 A That's true.

3 Q And isn't it also true that on that evening
4 when you entered Miss Ware's apartment she was dressed in
5 what would be called bedroom attire?

6 A I guess it was like a coulotte thing she had on.

7 Q She wasn't dressed in normal street clothes that
8 night?

9 A No. It was cold that night. She wasn't.

10 Q Now, when you came into the apartment, did you
11 have a search warrant for the apartment?

12 A No; we didn't.

13 Q How long did you remain inside that apartment?

14 A Just long enough for her to put on clothes that
15 she wanted to wear and leave.

16 Q And did the female agent go with Miss Ware in
17 a private room so that she could put some clothes on?

18 A That's right.

19 Q And while she was in this private room, what
20 were you and the four other agents doing?

21 A To my knowledge, we looked around the apartment,
22 in the closets and stuff, to see if there were any other
23 people in the apartment.

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Q You searched the apartment, right?

3

A We searched the apartment for our own safety,
yes.

5

Q I didn't ask you the purpose. I just asked
you whether you searched the apartment.

7

A Yes, we did.

8

Q Now, you say you read her her rights, right?

9

A Yes.

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Q And did you question her after you read her
her rights?

12

A I only asked if there was anybody else in the
apartment.

14

Q And what did she say?

15

A She said no.

16

Q Now, does your office have a form that you
have people sign after you advise them of their rights
and you are going to proceed to interrogate them?

19

A If they want to make a statement, yes, a written
statement.

21

Q Right. And did you ask Hattie Ware to sign
that form?

23

A Myself, I didn't, no.

24

Q Do you know if a brother officer asked her to
sign that form?

2 A I do not know.

3 Q And this is generally done, am I correct, if
4 the person wants to give a statement: you read them
5 their rights and then you asked them to sign that you have
6 explained their rights to them?

7 A Yes.

8 Q You have a normal form that you use?

9 A Yes.

10 Q And you use this in all cases?

11 A If the defendant wants to make such a state-
12 ment. -----

13 Q And you didn't, you personally didn't ask Hattie
14 Ware to sign such a statement?

15 A No. I personally, no.

16 Q And you don't know of any?

17 A No.

18 Q Now, let me ask you this: Isn't it true that
19 you got to the apartment at West 225th Street as a re-
20 sult of some information that you or your brother officers
21 obtained from Hattie Ware?

22 A I believe so, yes.

23 Q Isn't it also true that you did not know the
24 location of Basil and Estelle Hansen until after you
25 or your brother officers had spoken to Miss Ware?

2 A That's correct.

3 Q And isn't it also true that you obtained the
4 address for this apartment at West 225th Street from a
5 phone book that was taken from the possession of Miss
6 Ware?

7 A That's correct.

8 Q And you had no search warrant, is that right,
9 for Miss Ware?

10 A She had it on her person.

11 Q You had no specific search warrant?

12 A No.

13 Q Now, the apartment at West 225th Street, you
14 searched that apartment, too, didn't you?

15 A We searched it in so far as looking for
16 other individuals in closets and stuff. The stuff that
17 we seized was simply in view. It was right out in the
18 open.

19 Q Officer, I just asked you one question. The
20 question was, did you search the apartment?

21 A Yes.

22 Q My second question to you is, did you have
23 a search warrant for that apartment?

24 A No, we did not.

25 Q Now, isn't it true that in that particular

2 apartment you seized numerous items, namely, contraband,
3 from a wardrobe closet.

4 A I will tell you the truth: the only thing
5 that we seized that I remember was either Agent Nolan or
6 Agent Moore seizing the photos and myself seizing the nar-
7 cotics and the narcotics paraphernalia.

8 Q Where did you find the narcotics paraphernalia?

9 A I stepped in it as I went through the apart-
10 ment.

11 Q But there were other agents with you at West
12 225th Street, weren't there?

13 A Yes.

14 Q There were at least three other agents,
15 weren't there?

16 A Yes, right.

17 Q And I show you what has been provided to me
18 by the government as required by law, deemed 3500 material,
19 and a report signed by you, and I want you to look at it
20 and tell me if it is your report.

21 A Yes, it's my report.

22 Q Now, would you read to yourself the time that
23 I have bracketed on this page and the other page.

24 A To myself or out loud?

25 Q To yourself.

2 (Pause.)

3 A Yes, I have read it.

4 Q Does that refresh your recollection as to
5 what items were seized from that apartment?6 A This is what narcotics -- narcotics and nar-
7 narcotics paraphernalia.8 Q Does that refresh your recollection as to what
9 was seized from that apartment?

10 A Yes.

11 Q By you or your brother officers?

12 A Yes.

13 Q And is it true, now that your recollection
14 is refreshed, that certain items were seized from a
15 wardrobe closet?

16 A I really can't recall.

17 Q Does it say that in this report?

18 A No, there's no mention of a wardrobe closet.

19 Q Is there mention of a wardrobe room?

20 A Yes.

21 Q Okay. Now, what is the wardrobe room?

22 Was that closed?

23 A No, it was an open door at the end of the hall-
24 way. There was loose powder in between that room and
25 the hallway, and there was sealed bags of white powder

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Maguire-cross

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2 on the left-hand side, unsealed bags on the right-hand
3 side and various narcotics paraphernalia.

4 Q In that room?

5 A Yes.

6 Q And that was a separate room?

7 A Yes, and there was at least 50 or 60 pairs of
8 shoes on the wall, a number of --

9 Q How many rooms were there in the apartment?

10 A A bedroom, wardrobe room, kitchen and a large
11 living room, as I remember, off the top of my head.

12 Q And you say you personally did not seize the
13 photographs in that room?

14 A That's correct. They were seized in the
15 bedroom, I believe.

16 Q Do you have the photographs with you?

17 A Myself, no. I'm not the case agent on it.

18 MR. PANZER: Do you have the photographs?

19 MR. ENGEL: Your Honor, I believe the
20 photographs are upstairs.

21 Q Were the photographs in an album?

22 A Yes, they were in an album.

23 Q Could you describe the album to us?

24 A It's a normal 8 x 12 wedding album, I imagine.

25 Something that you put wedding pictures in, something

2 like that.

3 Q And was the album closed?

4 A Yes. It had two covers, back and front.

5 Q I see. So that you could not see the
6 pictures unless you opened the album, is that right?

7 A That's right.

8 Q Now, you say you were present during part of
9 the time at West 57th Street when your brother officer
10 was questioning Miss Ware?

11 A Yes.

12 Q Did you hear her request the presence of an
13 attorney during that questioning?

14 A I did not.

15 Q When you first arrested Miss Ware back in her
16 apartment at University Avenue, was she crying?

17 A I don't know whether she was crying. I
18 know she was a little upset.

19 Q Well, can you describe her condition?

20 A She was very confused. She didn't know why
21 we were arresting her. I told her she was being
22 arrested for violation of the federal narcotics laws, and
23 we had difficulty explaining --

24 Q You had difficulty explaining to her what you
25 were doing there and what your purpose was?

2 A I had no difficulty --

3 Q She was confused?

4 A Yes, she was confused.

5 Q She had difficulty understanding you?

6 MR. FORTUIN: Objection. I don't know
7 how he would know whether she was confused or not.

8 A She was calm when we left the apartment.

9 Q When you entered the apartment what was her
10 condition?

11 A I would say she was confused.

12 MR. PANZER: I have no further questions.

13 Thank you.

14 THE COURT: All right. Agent, step
15 down.

16 (Witness excused.)

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2 MR. ENGEL: The government now calls John
3 Nolan, your Honor.

4 JOHN NOLAN, called as a witness
5 by the government, being first duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. ENGEL:

9 Q Mr. Nolan, where are you employed?

10 A I am employed for the Justice Department,
11 Drug Enforcement Administration.

12 Q What is your position there?

13 A I am a special agent.

14 Q How long have you been so employed?

15 A Since June of 1971.

16 Q Where is your place of business normally?

17 A 57th Street and Eleventh Avenue.

18 Q Calling your attention to the evening of
19 October 3, 1973, were you on duty at your normal place
20 of business at Eleventh Avenue and 57th Street?

21 A Yes, I was.

22 Q On that evening did you have occasion to ask
23 questions of one Hattie Ware?

24 A Yes, I did.

25 Q Prior to your asking her any questions did you

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2 read her a form advising her of her rights?

3 A Yes. I read the form that we have, BND13.

4 Q Do you have a copy of the form BND13 on your
5 person?

6 A Yes, I do.

7 Q Would you read that, please.

8 A Yes.

9 "Before we ask you any questions it is my duty
10 to advise you of your rights.

11 "1. Do you understand that you have a right
12 to remain silent?

13 "2. Do you understand that anything you
14 say can and will be used against you in court or other
15 proceedings?

16 "3. Do you understand that you have the
17 right to talk to a lawyer before we ask you any questions
18 and to have him with you during the questioning?

19 "4. If you cannot afford or otherwise obtain
20 a lawyer and you want one, a lawyer will be appointed for
21 you by the United States commissioner or the court and
22 we will not ask any questions until he has been ap-
23 pointed.

24 "5. If you decide to answer now with or
25 without a lawyer you still have the right to stop the

2 questioning for the purpose of consulting a lawyer.

3 "However, you may waive the right to advice
4 of counsel and your right to remain silent and you may
5 answer the questions or make a statement without con-
6 sulting a lawyer if you so desire."

7 Q After reading her each numbered paragraph there
8 did you explain those rights in language other than that
9 which was on the card?

10 A Yes, I did. It's more or less normal proce-
11 dure.

12 Q And you explained it just that she could get
13 a lawyer and --

14 MR. PANZER: Your Honor, I am going to object
15 unless Mr. Engel wants to testify.

16 THE COURT: Yes, Mr. Engel. Just ask
17 him what he said.

18 Q Referring to the first paragraph there, for
19 instance, what did you say that evening, if you can re-
20 call?

21 A Well, "If you don't want to talk to me you
22 don't have to."

23 Q Thank you. After reading her the entire
24 card did she consent to speak to you?

25 MR. PANZER: I am going to object to the form

1 jha Nolan-direct 1040
2 of that question.

3 THE COURT: All right. After you read
4 her the entire card did she say anything to you?

5 A No.

6 Q Did you then read her another form of the
7 Bureau of Narcotics and Dangerous Drugs, as it was then,
8 and ask her questions?

9 A Yes, I did. It is a form they call 202
10 What it is actually called is a personal history
11 sheet.

12 Q On that form what questions did you ask?

13 A Well, the form starts off name, address,
14 telephone number, date of birth, place of birth, you know,
15 female, nationality, height, weight, and it asks have you
16 ever had previous arrests.

17 Let me see.

18 Then on the back of the form it is more or less
19 family oriented. It has like the name of your mother,
20 your father, sisters, brothers, children, things of that
21 nature.

22 Q On this form, on the back of it, where relatives
23 were identified or asked to be identified, did Miss Ware
24 identify her relatives to you?

25 A Yes. I asked her directly if she had a

2 niece by the name of Bunny and she said, "Yes, I have."

3 I said, "What's her name, her full name?"

4 Q Did she give you her full name?

5 A Yes, she did. She said, "Estelle Hansen."

6 Q Did you then ask her whether she knew a Basil
7 Hansen?

8 A Yes. I asked her that right afterwards and
9 she responded, "Yes, I did," and that it was Estelle's
10 husband.

11 Q Did you ask her the address of Basil Hansen?

12 A Yes, I did, but she wouldn't answer.

13 Q What did you do then?

14 A Well, I left the room that we were talking in
15 and I went back to my group for about -- I would say
16 about 30 minutes and there were several miscellaneous pieces
17 of paper that were found on her and I started going through
18 the pieces of paper and I took about a dozen pieces of
19 paper, I guess, and I went in and I sat down again and
20 I said, "Do you want to tell us where Basil lives?"
21 and she wouldn't answer.

22 So I started going through the pieces of paper,
23 you know, and like on one number, I think, I asked her --
24 it was a telephone number on a piece of paper. I says,
25 "Who does this belong to?"

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2 If I am not mistaken she said something like,
3 "It's a friend at work."

4 So I went on. Finally, I came to a
5 piece of paper that had an address and a phone number on
6 it and I said, "Who lives here?"

7 Q Mr. Nolan, what address and what phone
8 number, if you can recall, were on that piece of paper?

9 A The address was 150 225th Street, The phone
10 number I don't recall, the exact phone number.

11 Q As you ran through these pieces of paper did
12 she identify or do you recall that she identified persons
13 whose names and addresses were on those pieces of
14 paper?

15 A Yes. To the best of my knowledge, she
16 identified just about all of them as friends, except when
17 I got to that one piece of paper with the address 150.

18 Q. I am coming to that. What did she say about
19 that piece of paper?

20 A I asked her --

21 Q Excuse me. What did you ask her about it?

22 A I asked her directly, I said, "Who lives
23 here, who lives at this address?" and she responded
24 back, "I can't tell you that."

25 I asked her again and she responded back with

2 the same answer.

3 So then after a while -- this went on for --
4 I don't know -- a minute or two and then I asked her, I
5 says, "Basil Hansen lives there, doesn't he?"

6 Q And what was her response, if any, to your
7 saying that?

8 A She said absolutely nothing.

9 Q Was there any visible reaction at the time,
10 if any reaction you could see?

11 A Well, from what I saw, she got very emotional,
12 she started crying. So then I just walked out of the
13 room.

14 Q Where did you go when you left the room?

15 A I reported back to my group supervisor, Richard
16 Smith. I told him that it was my impression that this
17 address was Basil Hansen's address.

18 Q At that time did you have a federal arrest
19 warrant for a John Doe, also known as Basil?

20 A That's correct.

21 Q Did your supervisor thereafter do anything?

22 A He instructed myself and approximately six
23 other agents to proceed to that address and to wait there
24 while another agent that would be stationed in our head
25 office would put a call at the phone number that was

1 jha Nolan-direct 1044

2 written below the address.

Q Did you immediately proceed to that address?

A Yes, we proceeded to the address.

radioed in to tell him that we were ready. About a minute or so after we got a radio response from the radio dispatcher saying "Nobody is home. We will try it again in an hour."

A Well, this was -- this had to be around like
2 o'clock in the morning. So a bunch of us went to get
something to eat and then I called up the office to find
out exactly what happened and I talked to Agent Art Carter,
who is in our group. He was the one that made the
call. I said, "What was the response?"

He says, "I just called up, I said, 'Is Basil there?' and a female voice answered 'No, try back in maybe an hour.'" [unclear]

19 I said, "Okay. When we are set up again
20 I'll get you on the radio and you can put the call
21 through again."

22 Q Did you thereafter call by radio to -

A That's correct, approximately an hour later.
It was somewhere in the vicinity of 3 or 4 in the morning.

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2 Q This was the morning of October 4th?

3 A October 4th, yes. We told him we were set
4 up and he said, "The call is placed through."

5 The radio dispatcher got back to us. He
6 said, "The call is placed through, he is there," and
7 the agents proceeded to the apartment.

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4B 2 Q When you went to the apartment where did you
3 situate yourself?

4 A I went directly into the apartment. The first
5 thing I did was I asked Agent Maguire -- well, first he
6 told me that a male, Basil, had left, fled, and that Bunny
7 Hanson was under arrest.

8 Then he showed me the narcotics that was right
9 on the floor and I proceeded in towards the bedroom.

10 Q You arrived later then, is that your testimony,
11 than the other agents?

12 A That's correct. I arrived in the apartment
13 maybe -- I would say approximately five to ten minutes after
14 they entered the apartment, the other agents.

15 Q At the time you entered the apartment did you
16 seize any articles in the apartment?

17 A Yes. I personally seized four to five photo
18 albums and certain miscellaneous papers, most of it
19 composing of bills, and then the narcotics, which was
20 approximately three-quarters of a kilogram.

21 Q During the time you were in the apartment where
22 was Mrs. Hanson?

23 A She was in the custody of Agent Coonce and Agent
24 Edgar Adamson.

25 Q Did you thereafter leave the apartment?

1 hp2 Nolan-direct

2 A Yes, all the agents left the apartment to-
3 gether.

4 Q Did Mrs. Hanson accompany you?

5 A Yes, she did.

6 Q Where did you go?

7 A We went back to our office, which is at 555
8 West 57th Street, Manhattan.

9 MR. ENGEL: I have no further questions.

10 CROSS EXAMINATION

11 BY MR. PANZER:

12 Q Agent Nolan, what time was it that night that
13 you started questioning Mrs. Ware?

14 A I am pretty sure it was still October 3rd.

15 The definite time, I am not sure. I would say maybe around
16 midnight.

17 Q And she had been in custody for at least four
18 hours up to that time, isn't that true?

19 A Yes, I guess. I don't know the exact time.
20 I guess so.

21 Q When you questioned her were you and her alone
22 or were there other agents present?

23 A On several different instances there were agents
24 present. At other times I was alone with her, yes.

25 Q While you were questioning her you said she

1 hp3

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2 cried?

3 A Yes, on several different occasions.

4 Q And she seemed confused to you, did she not?

5 A Yes, she did.

6 Q Agent Nolan, isn't it true that when you normally
7 question prospective defendants or defendants there is a
8 form that you have them sign after you read them their
9 rights?

10 A That's a form some agents use. I have never
11 used it personally.

12 Q Did you or any of the other agents ask Mrs. Ware
13 to sign any form that would indicate that she had had her
14 rights read to her?

15 A To my knowledge, no.

16 Q Where did you get these papers that you con-
17 fronted her with while you were questioning her? You said
18 you had papers with names on them.

19 A Yes. Agent Maguire gave them to me.

20 Q But they were sized from Miss Ware's person,
21 weren't they?

22 A That's what I was told, yes.

23 Q From her pocketbook, right?

24 A I don't know if it was from her pocketbook or
25 her wallet.

2 Q But you didn't have these items before you
3 arrested her, is that true?

4 A That's correct.

5 Q Before you started questioning her you did not
6 know the location of this apartment at West 225th Street,
7 right?

8 A No.

9 Q It was as a result of you questioning her that
10 you determined this location?

11 A That's correct.

12 THE COURT: I just want to make sure we all
13 understand what the answer "No" meant. It was a double
14 negative, "Yes, he did not know the identity of the apart-
15 ment before."

16 MR. PANZER: I will rephrase it.

17 THE COURT: It doesn't matter. I know what it
18 means. I assume everybody else does. Now the record
19 does in case somebody wants to review it.

20 Q So that your subsequent entry into that apart-
21 ment at West 225th Street resulted from your questioning
22 of Mrs. Ware?

23 A That's correct.

24 Q Without that questioning you wouldn't have been
25 able to find the apartment, right?

1 hp3

Nolan-cross

1050

2 A No, not during that night, we wouldn't have.

3 Q You wouldn't have been able to establish the
4 location of the Hansons, right?

5 A That's true.

6 MR. PANZER: I have no further questions.

7 THE COURT: All right. Step down.

8 (Witness excused.)

9 MR. FORTUIN: We have no further witnesses,
10 your Honor.

11 THE COURT: Mr. Panzer was good enough to supply
12 me with a list of citations and also a copy of a case by
13 the name of Brown v. United States. I don't have the
14 official cite, but it's 93 Supreme Court 1565. I would
15 assume that the United States Attorney's office would like
16 to also supply me with certain citations. Is that correct?

17 MR. FORTUIN: Yes, your Honor. I think we can
18 get that up very quickly, this afternoon, I would think,
19 to your chambers.

20 THE COURT:-- This afternoon? It's a quarter to
21 five.

22 MR. FORTUIN: I am usually here.

23 THE COURT: You might be usually here, but I try
24 to be usually out of here. If you gentlemen will be good
25 enough to supply those to me tomorrow morning, and also

2 Mr. Panzer, I would appreciate it. I don't want a big
3 fat brief. I have to read the cases one way or the other.

4 MR. ENGEL: Your Honor, the official cite I
5 believe is 411 223.

6 THE COURT: I have it. I don't care whose books
7 I read.

8 MR. PANZER: Will your Honor take argument on
9 this or do you not wish any argument?

10 THE COURT: Let me ask one question of the
11 government right now.

12 By the way, the photos are deemed marked, because
13 you have to have that in order to suppress.

14 MR. PANZER: For purposes of this hearing.

15 THE COURT: Yes. Do you expect that the pictures
16 will come in tomorrow? ---

17 MR. FORTUIN: By no means. The pictures would not
18 come in for several days.

19 THE COURT: All right. Why don't you let me have
20 the cases. I will read them and perhaps say tomorrow
21 afternoon after the close of the regular trial we will take
22 argument. All right?

23 MR. ENGEL: Very good.

24 THE COURT: Does that put a burden on you?

25 MR. PANZER: I just want to make sure I have

2 the transcript tomorrow because there is something important
3 in the transcript that I want to refer to.

4 THE COURT: If it's not going to come in
5 tomorrow, you want to make sure, why don't we make it
6 Friday morning.

7 MR. PANZER: Fine.

8 THE COURT: It's not going to take more than
9 15, 20 minutes, is it?

10 MR. PANZER: 10.

11 THE COURT: All right. Let's do it, say, a
12 quarter to 10 on Friday.

13 MR. PANZER: Very good.

14 THE COURT: All right. Good night, gentlemen.

15 MR. POLLACK: Your Honor, I indicated to you in
16 the robing room that there was a motion that I would want
17 to make for the record at Mr. Salley's request in regards
18 to him. Would your Honor want me to make that now?
19 It will be rather brief.

20 THE COURT: It doesn't matter to me, honestly,
21 but I am going to suggest to you that you hold on until
22 morning. I will tell you the reason why.

23 Some of the counsel in this case have already
24 moved to sever Mr. Salley and I said then no, that they
25 weren't counsel for him, I would wait until a counsel was

2 appointed.

3 I am quite sure, knowing the fact that co-
4 counsel in this case are quite bright, they might want to
5 be present during any such motion. Under the circumstances
6 why don't we hold off until the morning.

7 MR. POLLACK: Very well. In that case all I
8 would ask is that the government make its commitment to
9 furnish me --

10 THE COURT: I assure you they will furnish it
11 to you.

12 While we are on the subject, I will contact I
13 think the man's name is Kenneth Segal, who is the brother
14 of Murray Segal, and arrange to get that file to you. I
15 will take care of that personally. Instead of having the
16 government or you bother with it I will do it.

17 MR. FORTUIN: If you want to come with me at
18 this time we will supply you with the Pannirello transcripts,
19 the indictment and the other items we have discussed, the
20 bill of particulars.

21 MR. POLLACK: All right.

22 (Adjourned to February 7, 1974, at 10.00 a.m.)

24

25

